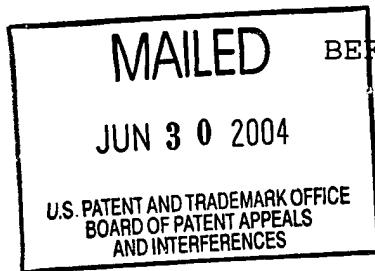


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RODGER BURROWS

Application No. 09/910,654

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on June 15, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

Appellant filed an amendment on October 17, 2003 (Paper No. 10). The examiner responded to appellant's amendment in an Advisory Action mailed on October 28, 2003 (Paper No. 12). Since the examiner has indicated in Block 2 of the Advisory Action that the amendment (Paper No. 10) would not be entered, but has indicated in Block 7 of the Advisory Action that the amendment would be entered, it is not clear as to whether or not the examiner has entered appellant's amendment (Paper No. 10). Clarification on the record is required.

Application No. 09/910,654

In addition, on January 21, 2004, appellant filed an Appeal Brief (Paper No. 15). With respect to the amendment filed on October 17, 2003 (Paper No. 10), appellant states the following on page 4, paragraph 4 of the Brief:

The amendment filed on October 17, 2003 comprising an amendment after [sic] under 37 C.F.R. 1.129(a), was not entered by the Examiner in accordance with his communication of October 28, 2003. However, the additional documents disclosed on Form PTO 1449 were considered by the Examiner and made a matter of record. . . . The office communication of October 28, 2003 provided that the amendment of October 17, 2003 amending claims 15 and 17 and canceling claim 16 would be entered for purposes of this appeal.

The examiner indicated on page 2, section (4) of the Examiner's Answer mailed on February 23, 2004 (Paper No. 16) that "appellant's statement of the status of amendments after final rejection contained in the brief is correct." Again, the examiner needs to clarify for the record the proper status of appellant's amendment (Paper No. 10).

Accordingly, it is

ORDERED that the application is returned to the examiner to clarify for the record whether or not the amendment (Paper No. 10) has been entered and, if so, to

(1) physically enter the amendment (Paper No. 10) and notify appellant in writing of entry, or if the amendment has not been

Application No. 09/910,654

entered to notify appellant to take corrective action regarding
the amendment by submitting a corrected Appendix to the Brief
(Paper No. 10) and

(2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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CRF/clm/dm
RA04-0632

The After Final Amendment has been entered per Paper No. 12.



JAMES W. MYHRE
PRIMARY EXAMINER